

Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108 phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY DOCKET NO. 508

IN THE MATTER OF BENJAMIN NUTTER

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Benjamin Nutter ("Nutter") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Nutter. The Commission has concluded its inquiry and, on October 11, 1994, found reasonable cause to believe that Nutter violated G.L. c. 268A.

The Commission and Nutter now agree to the following findings of fact and conclusions of law:

- 1. Nutter was, during the time relevant, a member of the Topsfield Historic Commission ("Historic Commission"). As such, Nutter was a municipal employee as that term is defined in G.L. c. 268A, §1.
- 2. At all times relevant hereto, Nutter was a licensed architect in the state of Massachusetts and had an office in Topsfield. During 1992, Nutter provided architectural services to Tim and Susan Ward in connection with an addition for their home located on Main Street in Topsfield ("Addition"). Those services included preparing drawings for the Addition.
- 3. On October 14, 1992, at the Historic Commission meeting, the Wards submitted an application for a Certificate of Appropriateness ("Certificate") for the Addition. The application included the drawings prepared by Nutter mentioned above. Nutter appeared with the Wards, as their architect, in connection with the Certificate and discussed the project.
- 4. On November 4, 1992, Nutter appeared with the Wards, as their architect, in connection with a public hearing before the Historic Commission relating to the Addition. Nutter participated in the discussion of the Certificate, but abstained on the vote. The Historic Commission voted to approve the Certificate.
- 5. G.L c. 268A, §17(c) prohibits a municipal employee, otherwise than in the proper discharge of his official duties, from acting as agent for a private party in connection with any particular matter in which his town has a direct and substantial interest.
- 6. The decision whether to approve the Certificate was a particular matter. The town had an obvious direct and substantial interest in that particular matter. By acting as the Wards' agent before the Historic Commission concerning their Certificate as set out in the foregoing paragraphs, Nutter violated G.L. c. 268A, §17(c).

In view of the foregoing violations of G.L. c. 268A by Nutter, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nutter:

- (1) that he, in the future, refrain from acting as agent for private parties in connection with particular matters in which the town of Topsfield has a direct and substantial interest, as prohibited by G.L. c. 268A, §17(c);
- (2) that he pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for the violations of G.L. c. 268A, \$17(c); and
- (3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: October 24, 1994